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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY ESQ. SR., doing  
business as SHEETMETAL &  
ASSOCIATES,

Plaintiff,

v.

U.S. INTERNAL REVENUE SERVICE  
TAXPAYER ADVOCATE,

Defendant.

Case No. 1:21-cv-00870-NONE-EPG

SCREENING ORDER

ORDER FOR PLAINTIFF TO:

(1) FILE A FIRST AMENDED COMPLAINT;  
OR

(2) NOTIFY THE COURT THAT HE  
WISHES TO STAND ON HIS  
COMPLAINT

(ECF No. 1)

THIRTY-DAY DEADLINE

Plaintiff Shannon O. Murphy Esq. Sr. doing business as Sheetmetal & Associates (“Plaintiff”) is proceeding *pro se* and *in forma pauperis* in this action. Plaintiff filed the Complaint commencing this action on June 1, 2021. (ECF No. 1.) The Complaint sets forth claims against the U.S. Internal Revenue Service Taxpayer Advocate arising out of two phone calls that caused Plaintiff to panic. The Court finds that the Complaint fails to state any cognizable claims.

After Plaintiff reviews this order, Plaintiff can decide to file an amended complaint, which the Court will screen in due course. Plaintiff can also notify the Court that he wants to stand on

1 his complaint, in which case this Court will issue findings and recommendations to the district  
2 judge assigned to the case recommending that Plaintiff's complaint be dismissed for the reasons  
3 in this order. If Plaintiff does not file anything, the Court will recommend that the case be  
4 dismissed.

## 5 **I. SCREENING REQUIREMENT**

6 As Plaintiff is proceeding *in forma pauperis*, the Court screens this complaint under 28  
7 U.S.C. § 1915. "Notwithstanding any filing fee, or any portion thereof, that may have been paid,  
8 the court shall dismiss the case at any time if the court determines that the action or appeal fails to  
9 state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

10 A complaint is required to contain "a short and plain statement of the claim showing that  
11 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
12 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
14 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set forth "sufficient factual  
15 matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting  
16 *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this  
17 plausibility standard. *Id.* at 679. While a plaintiff's allegations are taken as true, courts "are not  
18 required to indulge unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681  
19 (9th Cir. 2009) (citation and quotation marks omitted). Additionally, a plaintiff's legal  
20 conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

21 Pleadings of *pro se* plaintiffs "must be held to less stringent standards than formal  
22 pleadings drafted by lawyers." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that  
23 *pro se* complaints should continue to be liberally construed after *Iqbal*).

## 24 **II. ALLEGATIONS IN THE COMPLAINT**

25 The Complaint alleges as follows:

26 3. Plaintiff's Mr. Shannon O. Murphy Esq. Sr. while he did remain perform legal  
27 business attending his legal advisory and document company named Sheetmetal &  
28 Associates, about 5:45 p.m. (PST). was told by IRS. Taxpayer Advocate Hotline  
agent of named, Ms. Barton, that the IRS relevant computer information system  
was being up-dated, and that he should call back the following Monday,  
01/04/2021, in order apply for at regards the IRS form 911, "Request for Taxpayer  
Advocate Service Assistance" reply.

1 4. Mr. Murphy, the case plaintiff's, did in fact call again the Taxpayer Advocate  
2 Hotline, at (877) 777-4778, on Monday, 01/04/2021, and was reach IRS agent  
3 #1003651022, Mr. White, at about 6:28 p.m. (PST).  
4 Mr. White, agent to defendant, did place Mr. Murphy on hold, for he implied was  
5 going to be a brief period of time, in order he, Mr. White, attend fair to  
6 applications relevant, and could be indicated applied by he alone, regards handling  
7 mine request IRS advocate relevant assistance; Mr. White, of case defendant's  
8 agents, after about a 15 min. wait, never returned to the telephone call remain at  
9 hold jurisdiction, he apply he should return; Plaintiff's Mr. Murphy, was compel a  
10 panic – attack, upset VA doctor diagnosed accords relevant Bipolar 1 Disorder,  
11 and since so, Mr. Murphy alleges an type assault took place. Consequently before  
12 here as was, there must definitely had occur a “breach of contract”.

13 5. Plaintiff's Mr. Murphy, latter, on 01/06/2021, attempted to call again, in order  
14 comply a regards complain against the unfair subject Mr. White, did allow for tort-  
15 negligence regards occur, since he failed continue at the telephone conversation at  
16 fair progress, by he should attempt try contact to Murphy, after telephone  
17 conversation was interrupted; Plaintiff's Mr. Murphy, this time was answered by  
18 an IRS agent at (877) 777-4778, named Mr. Lopez, agent #1000158053, at about  
19 5:45 p.m. (PST), and was very rudely detoured of fair necessary communications  
20 relevant mine asked, requested, required. Plaintiff's Murphy was caused again an  
21 panic – attack, that plaintiff alleges, on purpose, to elude, as for Mr. Lopez, be fair  
22 apply relevant for continuity remain attend 911 form.

23 (ECF No. 1 at 2.)

24 In a section titled “Cause of Action,” Plaintiff lists breach of contract, tort-negligence,  
25 assault-covert method, and injury/illness. (ECF No. 1 at 2.) Plaintiff requests relief in the form of  
26 “[r]elative declares plaintiff Shannon O. Murphy Esq. Sr. dba. Sheetmetal & Associates, an  
27 INLC., victor, attends at court case relevant, associate a fair justice concern this U.S. District  
28 Court jurisdiction.” (*Id.* at 3.) Plaintiff also requests “future court costs, medical support relative  
costs, by allow award to plaintiff, for such above mentioned requires a restitution, compensation,  
\$3,040,000” and “[m]edical billing costs to payment relevant medical facilities, include also  
relevant VA Clinics used, are of also to be accommodated secure relevant paid up, and to with,  
for now, to then, and for the future, a medical related issue, for billing be of manifest, occur, that  
to be paid, at relevant plaintiff's.” (*Id.*)

### 29 **III. ANALYSIS OF PLAINTIFF'S CLAIMS**

#### 30 **A. Pleading Standards**

31 As set forth above, Federal Rule of Civil Procedure 8(a) (“Rule 8(a)”) requires a  
32 complaint to contain “a short and plain statement of the claim showing that the pleader is entitled  
33

1 to relief.” Fed. R. Civ. P. 8(a)(2). Although a complaint is not required to include detailed factual  
2 allegations, it must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief  
3 that is plausible on its face.’ ” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). It must  
4 also contain “sufficient allegations of underlying facts to give fair notice and to enable the  
5 opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).  
6 Moreover, Plaintiff must demonstrate that each named defendant personally participated in the  
7 deprivation of his rights. *Iqbal*, 556 U.S. at 676-77.

8 A court may dismiss a complaint for failure to comply with Rule 8(a) if it is “verbose,  
9 confusing and conclusory.” *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981);  
10 *Brosnahan v. Caliber Home Loans, Inc.*, 765 Fed. App’x 173, 174 (9th Cir. 2019). Additionally, a  
11 court may dismiss a complaint for failure to comply with Rule 8(a) if it is “argumentative, prolix,  
12 replete with redundancy, and largely irrelevant.” *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir.  
13 1996).

14 The Complaint violates Rule 8(a). The allegations are confusing and convoluted, making  
15 it difficult for the Court to determine what, if any, cognizable claims are included in the  
16 Complaint. Although the Federal Rules employ a flexible pleading policy, Plaintiff must give fair  
17 notice to the defendants and must allege facts that support the elements of the claim plainly and  
18 succinctly. It is Plaintiff’s duty to articulate his claims, not the Court’s or the defendant’s duty to  
19 try to decipher what claims Plaintiff is asserting in the action.

20 The Court will grant Plaintiff leave to amend his complaint so that he can include  
21 additional factual allegations and make a clear statement. If Plaintiff chooses to amend his  
22 complaint, Plaintiff should use clear and plain language. He must allege facts and a cause of  
23 action that outlines his claims. Plaintiff must allege the who, what, when, where, and why of his  
24 claims. Plaintiff must explain his case with specificity and identify what each defendant did,  
25 which claims he intends to bring against each defendant, and the bases for those claims.

#### 26 **B. Legal Standards**

27 In the event Plaintiff amends his complaint, the Court provides the following legal  
28 standards which may be relevant to his action:

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1           **1. Sovereign Immunity**

2           The United States is immune from suit absent specific statutory consent waiving  
3 immunity. *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 141-142 (1972); *United*  
4 *States v. Shaw*, 309 U.S. 495, 500-501 (1940). Even when suits against the United States are  
5 authorized, they may only be brought in designated courts with jurisdiction over the subject  
6 matter of the suit. *Shaw*, 309 U.S. at 501. Therefore, before the merits of Plaintiff's claim can be  
7 considered, there must be statutory authority which confers subject matter jurisdiction on this  
8 Court. Plaintiff must also allege sufficient factual detail to allow the Court to reasonably infer that  
9 it has jurisdiction over Plaintiff's claims. *Iqbal*, 556 U.S. at 678; *Moss v. U.S. Secret Service*, 572  
10 F.3d 962, 969 (9th Cir. 2009).

11           Here, Plaintiff does not refer to any statute which specifically provides for a suit against  
12 the United States for damages. However, construing the allegations liberally, the Complaint may  
13 be interpreted as asserting common law tort claims under the Federal Tort Claims Act ("FTCA")  
14 and a breach of contract claim under the Tucker Act.

15                   **A. Federal Tort Claims Act**

16           The FTCA is a waiver of sovereign immunity that allows a private litigant to bring causes  
17 of action for state law torts against the United States and its employees acting in the scope of their  
18 employment. 28 U.S.C. § 1346(b). It is the exclusive remedy for damages arising out of the  
19 tortious actions of federal employees. 28 U.S.C. § 2679(b)(1). The FTCA provides that the United  
20 States shall be liable for tort claims "in the same manner and to the same extent as a private  
21 individual under like circumstances." 28 U.S.C. § 2674; *United States v. Olson*, 546 U.S. 43, 46  
22 ("[The FTCA] makes the United States liable 'in the same manner and to the same extent as a  
23 private individual under like circumstances.'") (emphasis and citation omitted); *United States v.*  
24 *Orleans*, 425 U.S. 807, 813 (1976) ("The Federal Tort Claims Act is a limited waiver of  
25 sovereign immunity, making the Federal Government liable to the same extent as a private party  
26 for certain torts of federal employees acting within the scope of their employment."). The United  
27 States' liability under the FTCA is determined using the substantive law of the state in which the  
28 allegedly tortious conduct occurred. *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1025 (9th  
Cir. 2001).

1 Administrative exhaustion is a required element of a claim under the FTCA. *Gillespie v.*  
2 *Civiletti*, 629 F.2d 637, 640 (9th Cir. 1980) (“The timely filing of an administrative claim is a  
3 jurisdictional prerequisite to the bringing of a suit under the FTCA, and, as such, should be  
4 affirmatively alleged in the complaint.”) (internal citation omitted); *Brady v. United States*, 211  
5 F.3d 499 (9th Cir. 2000) (stating that a claimant under the FTCA must comply with 28 U.S.C. §  
6 2675(a) before a district court can exert jurisdiction over the claim). Specifically:

7 An action shall not be instituted upon a claim against the United States for money  
8 damages for injury or loss of property or personal injury or death caused by the  
9 negligent or wrongful act or omission of any employee of the Government while  
10 acting within the scope of his office or employment, unless the claimant shall have  
11 first presented the claim to the appropriate Federal agency and his claim shall have  
12 been finally denied by the agency in writing and sent by certified or registered  
mail. The failure of an agency to make final disposition of a claim within six  
months after it is filed shall, at the option of the claimant any time thereafter, be  
deemed a final denial of the claim for purposes of this section.

13 28 U.S.C. § 2675(a). “Because the requirement is jurisdictional, it ‘must be strictly adhered to.  
14 This is particularly so since the FTCA waives sovereign immunity. Any such waiver must be  
15 strictly construed in favor of the United States.’” *Brady*, 211 F.3d at 502 (quoting *Jerves v.*  
16 *United States*, 966 F.2d 517, 521 (9th Cir.1992).

17 Plaintiff appears to be seeking to recover money damages from the United States based on  
18 two IRS employees’ allegedly tortious conduct. The FTCA is thus Plaintiff’s exclusive remedy  
19 for his tort claims. However, Plaintiff has not alleged facts demonstrating that he complied with  
20 the FTCA’s administrative exhaustion requirement. Plaintiff therefore fails to state a cognizable  
21 FTCA claim against the United States. If Plaintiff amends his complaint, he should allege facts  
22 demonstrating he complied with the FTCA’s administrative exhaustion requirement.

23 Further, the FTCA does not apply to claims “arising in respect to the assessment or  
24 collection of any tax” are precluded under the FTCA. 28 U.S.C. § 2680(c). Any claims arising out  
25 of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel,  
26 slander, misrepresentation, deceit, or interference with contract rights are also excluded. 28  
27 U.S.C. § 2680(h). “[I]f the governmental conduct underlying a claim falls within an exception  
28 outlined in section 2680, the claim is barred, no matter how the tort is characterized.” *DaVinci*

1 *Aircraft, Inc. v. United States*, 926 F.3d 1117, 1123 (9th Cir. 2019). Therefore, to the extent  
2 Plaintiff's claims relate to the assessment or collection of any tax or arise out of assault, battery,  
3 misrepresentation, deceit, or any of the exceptions in section 2680, they are not covered by the  
4 FTCA's waiver of sovereign immunity.<sup>1</sup>

5 Finally, as noted above, as noted above, the United States' liability under the FTCA is  
6 determined using the substantive law of the state in which the allegedly tortious conduct occurred.  
7 In the Cause of Action portion of the Complaint, Plaintiff lists "Tort-Negligence".<sup>2</sup> (ECF No. 1 at  
8 2. ) However, Plaintiff has not alleged where he was located during the events in his complaint or  
9 any other facts describing where the alleged negligence occurred. Assuming the conduct occurred  
10 in California, Plaintiff is required to show a legal duty to use due care, of a breach of that duty,  
11 and of a showing that the breach was the proximate or legal cause of plaintiff's injury. *United*  
12 *States Liability Insurance Co. v. Haidinger-Hayes, Inc.*, 1 Cal.3d 586, 594 (1970); *see also Delta*  
13 *Savings Bank*, 265 F.3d at 1025 ("To bring a suit under the FTCA based on negligence per se, a  
14 duty must be identified, and this duty cannot spring from federal law. The duty must arise from  
15 state statutory or decisional law, and must impose on the defendants a duty to refrain from  
16 committing the sort of wrong alleged here.").

17 In this case, construing the allegations liberally, it appears that Plaintiff alleges he was  
18 harmed after an IRS agent, Mr. White, placed him on hold for fifteen minutes and another IRS  
19 agent, Mr. Murphy, was rude to him. (ECF No. 1 at 2.) Plaintiff does not identify any statutory,  
20 decisional, or other law that would give rise to a duty to refrain from committing these acts and  
21 the Court is not aware of any. If Plaintiff elects to amend his complaint, he should identify the  
22 duty of care Defendant's agents owed to him, including the relevant state law that imposes that

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23 <sup>1</sup> The Court notes that Plaintiff alleges that an "assault" took place during his conversations with the IRS employees.  
24 (ECF No. 1 at 2.) Plaintiff also lists a claim for "assault – covert method". (*Id.*) In support of these claims, Plaintiff  
25 alleges that he was placed on hold during one telephone call with an IRS employee and that another IRS employee  
was rude to him. (*See id.*) Plaintiff does not allege any other facts regarding the alleged assault. As the Complaint is  
difficult to decipher, it is unclear whether Plaintiff's claims arise out of an assault or otherwise falls within one of the  
exceptions enumerated in section 2680.

26 <sup>2</sup> In addition to negligence and assault, discussed further above, Plaintiff identifies Breach of Contract and  
27 Injury/Illness as causes of action. (ECF No. 1 at 2.) Plaintiff's breach of contract claim is addressed further below.  
28 The Court is not aware of any state law causes of action for "Injury/Illness" and it is unclear what claim Plaintiff  
intends to refer to by these terms.

1 duty, describe how that duty was breached, and explain how that breach caused Plaintiff's  
2 injuries.

### 3 **B. The Tucker Act**

4 Plaintiff also lists "Breach of Contract" in the "Cause of Action" section of the Complaint.  
5 (ECF No. 1 at 2.)

6 The Tucker Act, 28 U.S.C. § 1491, grants the United States Court of Federal Claims  
7 jurisdiction "to render judgment upon any claim against the United States founded upon . . . any  
8 express or implied contract with the United States[.]" 28 U. S .C. § 1491(a)(1). Pursuant to this  
9 statute, the "Court of Federal Claims possesses exclusive jurisdiction of claims arising under the  
10 Tucker Act in excess of \$10,000." *United States v. Park Place Assocs.*, 563 F.3d 907, 927 (9th  
11 Cir.2009).<sup>2</sup> As the Ninth Circuit Court of Appeal explains:

12 The Tucker Act supplies both a basis for the exercise of subject matter jurisdiction  
13 and a concomitant waiver of sovereign immunity in the Court of Federal Claims.  
14 This is a package deal-the waiver of sovereign immunity is coextensive with the  
jurisdiction the statute confers. The Tucker Act thus never waives sovereign  
immunity for suit in, nor confers jurisdiction on, the [district court.

15 *Id.*

16 Here, although the Complaint identifies a claim for breach of contract, Plaintiff has not  
17 alleged any facts indicating that a contract existed between Plaintiff and the United States or how  
18 that contract was breached. Notably, Plaintiff requests damages in the amount of \$3,050,00,  
19 which exceeds the \$10,000 benchmark for the Tucker Act. However, Plaintiff does not describe  
20 whether some or all of these damages are attributable to the alleged breach of contract. To the  
21 extent Plaintiff elects to amend his complaint, he should allege facts establishing the existence of  
22 a contract with the United States and describe how that contract was breached as well as the  
23 amount of any damages Plaintiff contends were caused by the breach. If Plaintiff seeks damages  
24 in excess of \$10,000.00 for a breach of contract with the United States, his claim is governed by  
25 the Tucker Act and is within the exclusive jurisdiction on the Court of Federal Claims.

### 26 **C. CONCLUSION AND ORDER**

27 The Court has screened Plaintiff's complaint and finds that it fails to state any cognizable  
28 claim.



1 Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, “the court should freely give  
2 leave [to amend] when justice so requires.” Accordingly, the Court will provide Plaintiff with  
3 time to file an amended complaint, so that Plaintiff can provide additional factual allegations.  
4 *Lopez v. Smith*, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file an  
5 amended complaint within thirty days.

6 If Plaintiff chooses to amend his complaint, in his amended complaint he must state what  
7 each named defendant did that led to the deprivation of his constitutional or other federal rights.  
8 Fed. R. Civ. P. 8(a); *Iqbal*, 556 U.S. at 678; *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).  
9 Plaintiff should note that although he has been given the opportunity to amend, it is not for the  
10 purpose of changing the nature of this suit or adding unrelated claims. *George v. Smith*, 507 F.3d  
11 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

12 Plaintiff is advised that an amended complaint supersedes the original complaint, *Lacey v.*  
13 *Maricopa County*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in  
14 itself without reference to the prior or superseded pleading, Local Rule 220. Therefore, in an  
15 amended complaint, as in an original complaint, each claim and the involvement of each  
16 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly  
17 titled “First Amended Complaint,” refer to the appropriate case number, and be an original signed  
18 under penalty of perjury.

19 Plaintiff has a choice on how to proceed. Plaintiff may file an amended complaint if he  
20 believes that additional true factual allegations would state cognizable claim(s). If Plaintiff files  
21 an amended complaint, the Court will screen that complaint in due course. Alternatively, Plaintiff  
22 may choose to stand on his complaint subject to the Court issuing findings and recommendations  
23 to a district judge consistent with this order.

24 Based on the foregoing, it is **HEREBY ORDERED** that:

- 25 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall either:
  - 26 a. File a First Amended Complaint; or
  - 27 b. Notify the Court in writing that he wants to stand on his Complaint;
- 28 2. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the  
amended complaint “First Amended Complaint” and refer to case number 1:21-cv-

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00870-NONE-EPG; and

3. Failure to comply with this order may result in the dismissal of this action.

IT IS SO ORDERED.

Dated: July 8, 2021

/s/ Eric P. Groj  
UNITED STATES MAGISTRATE JUDGE